

REMARKS

Claims 1-9 are pending herein.

The Examiner considers that a lack of unity of invention exists between the compounds encompassed by the compounds of formula (I), (II) and (IIIa). Applicants elect, with traverse, the single species of Compound 2.017 represented by formula (I-2) on page 22, wherein the variables for the compound of formula (I-2) are set forth as Compound No. X.017 in Table X on page 13, wherein X is 2. This is a compound of formula (I). Claims 1-5, 8 and 9 encompass the elected invention.

According to MPEP 815 - "When making a restriction requirement every effort should be made to have the requirement **complete**." (emphasis added) In the present case, the Examiner has only made a partial restriction requirement. As the restriction requirement is not complete, applicants can not elect any of the groups set forth, however, to comply with the Examiner's request, Applicants have elected a single disclosed species for examination purposes.

Reconsideration of the lack of unity requirement is respectfully requested. On page 2 of the office action, the Examiner states "Due to the numerous and widely divergent variables in the compounds of formula (I), (II) and (IIIa) ... a precise listing of inventive groups cannot be made." The Examiner sets forth seven groups as "exemplary". Applicants note that Groups IV and V refer to claim 7, however, the formula provided (i.e., formula (I)) is not the subject of claim 7.

Applicants view as appropriate the inclusion in a single application at least all claims reading on compounds within the scope of formula (I). The compounds represented by formula (I) all contain a common structure which occupies a large portion of their structure. The Examiner cites Haken et al., DE 1914954, for allegedly showing that the compounds defined in the claims lack a significant structural element qualifying as the special technical feature that defines a contribution over the prior art, however, the referenced compound of Haken, while sharing some features of the compound of formula (I), are not within the scope of the compounds of claim 1. According to MPEP 1850:

Although lack of unity of invention should certainly be raised in clear cases, it should neither be raised nor maintained on the basis of a narrow, literal or academic approach ... If there is a single general inventive concept that appears

novel and involves inventive step, then there is unity of invention and an objection of lack of unity does not arise. For determining the action to be taken by the examiner between these two extremes, rigid rules cannot be given and each case should be considered on its merits, the benefit of any doubt being given to the applicant.

For these reasons, Applicants submit that the lack of unity requirement should be reconsidered and all compounds within the scope of the pending claims be examined together.

Further, compounds of formula (II), as set forth in claim 6, are useful as intermediates in the preparation of compounds of formula (I) and, thus, there should also be unity of invention between claims 1-5, 8 and 9 and claim 6.

Applicants aver that they have made a complete response to the lack of unity requirement of the Examiner and that the instant application and claims are now in better condition for examination on their merits and for allowance.

However, in the event the undersigned is mistaken in his calculations, an appropriate extension of time to respond is respectfully requested, and the Commissioner is authorised to debit the appropriate fee for that extension, or any other fee, from the deposit account of the undersigned, no 50-1676 in the name of Syngenta Crop Protection, Inc.

Respectfully submitted,

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